

REMARKS

Claims 1-25, 27, 36-39, 49, 50, and 52 were previously cancelled, claim 28 is currently cancelled, claims 26, 29, 30, 40, 51, and 53 are amended, and claims 54-58 are new. Therefore, claims 26, 28-35, 40-42, 48, 51, and 53-58 are presented for prosecution in the present application.

Applicants respectfully assert that the subject matter of the new and amended claims are fully supported by the specification and drawings as originally filed under MPEP 2163(II)(A)(3)(a) and 2181(IV).

According to the Federal Circuit, “[i]n order to satisfy the written description requirement, the original application disclosure must convey with reasonable clarity to those skilled in the art that applicant, as of the filing date sought, was in possession of the claimed invention.” *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991). See also *Cooper Cameron Corp. v. Kvaerner Oilfield Prods., Inc.*, 291 F.3d 1317, 1322 (Fed. Cir. 2002) (applying *Vas-Cath*). The Federal Circuit has also stated that an applicant may show possession of an invention by disclosure of drawings that are sufficiently detailed to show that applicant was in possession of the claimed invention as a whole. See, e.g., *Vas-Cath*, 935 F.2d at 1565, 19 USPQ2d at 1118 (“drawings alone may provide a ‘written description’ of an invention as required by Sec. 112”); *In re Wolfensperger*, 302 F.2d 950, 133 USPQ 537 (CCPA 1962) (“Whatever [the drawing] does disclose may be added to the specification in words without violation of the statute and rule which prohibit ‘new matter,’ 35 U.S.C 132 . . . for the simple reason that what is originally disclosed cannot be ‘new matter’ within the meaning of this law”); *Autogiro Co. of America v. United States*, 384 F.2d 391, 398, 155 USPQ 697, 703 (Ct. Cl. 1967) (“In those instances where

a visual representation can flesh out words, drawings may be used in the same manner and with the same limitations as the specification."").

Applicants have amended the specification to include the subject matter disclosed by the drawings and included in the new and amended claims.

Allowed Claims

Applicants acknowledge the Examiner's allowance of claim 51. Applicants have amended claim 51 for matters of a formal nature, including removing redundancies.

35 USC §103 Claim Rejections

Independent claim 26 has been rejected under 35 USC §103 as being unpatentable over Shah 4,375,858 in view of Akers 5,449,078 and in view of Smith 3,608,763. Independent claims 30, 40, and 53, and dependent claims 28, 29, 31-34, 41, and 48 have been rejected under 35 USC §103 over Shah in view of Akers and in view of Smith as applied to claim 26 and further in view of Swartzbaugh 4,399,920. Dependent claims 35 and 42 have been rejected under 35 USC §103 over Shah in view of Akers and in view of Smith and in view of Swartzbaugh as applied to claim 30, and further in view of Puresevic 4,523,688. Reconsideration and withdrawal of the rejections is respectfully requested.

Missing Elements

When determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention - including all its limitations - with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)).

Applicants' amended independent claims 26, 30, 40, 53, and new independent claim 54 each recite, in one form or another, *inter alia*, a closure skirt extending from a closure base wall and having a stepped profile that includes a first portion on which is disposed at least one internal thread, and a second portion being connected to the first portion by inner and outer shoulders, terminating at a skirt open end opposite of the base wall, and being stepped to extend radially outwardly from the first portion. The second portion includes an outer diameter larger than that of the first portion, and an inner diameter larger than that of the first portion and on which is disposed at least one pair of internal lugs extending radially inwardly. The lugs include a first lug positioned proximate and just axially above the skirt open end, and a second lug circumferentially spaced from the first lug and positioned proximate and just axially below the inner shoulder of the closure skirt.

As shown at right, Shah discloses a container body 19 having a neck portion 16 with threads 20 and holding lugs 15 axially spaced from second ends of the threads 20. Shah discloses that the lugs 15 have cam surfaces 14 and stops 20 (sic) that circumferentially overlap the second ends of the threads 20. Shah also discloses a closure 18 applied to the container body 19 and including a top 23, an outer flange 24, 26, and a flange rim 17 including rectangular locking tabs 11 corresponding to the holding lugs 15 of the container body 19. The flange rim 17 also includes friction tabs 12 spaced between the locking tabs 11 to provide an audible indicator of locking engagement.

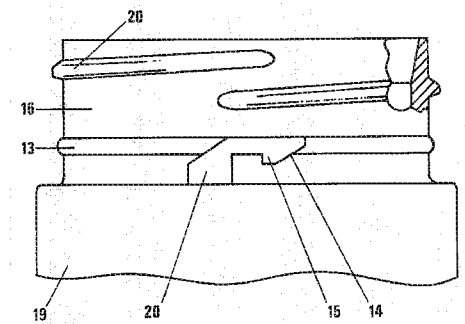


FIGURE 7

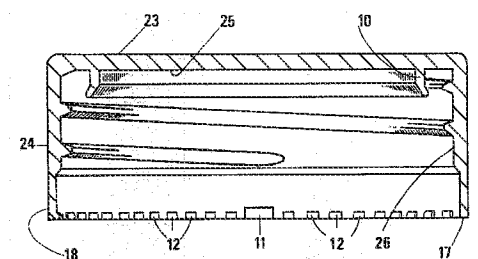


FIGURE 8

Shah discloses the closure 18 having threads 20 disposed on a first portion 26 having a smaller diameter than a second portion 17 that carries tabs 11. But Shah fails to teach or suggest, *inter alia*, that the second portion 17 is connected to the first portion 26 by inner and outer shoulders, is stepped to extend radially outwardly from the first portion 26, and includes an outer diameter larger than that of the first portion 26, and an inner diameter larger than that of the first portion 26. Although Shah discloses the tabs 11, Shah fails to teach or suggest a second lug circumferentially spaced from the tabs 11 and positioned proximate and just axially below an inner shoulder of the closure skirt.

Akers does not cure the aforementioned deficiencies of Shah. Akers discloses a container 10 including a camming latch 21 having a cam receiving notch 22, and a cap 11 including a lock lug 20 which is guided into the notch 22 upon rotation of the cap 11 on the container 10.

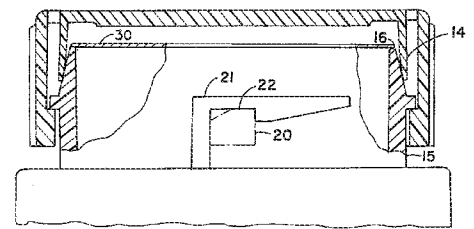
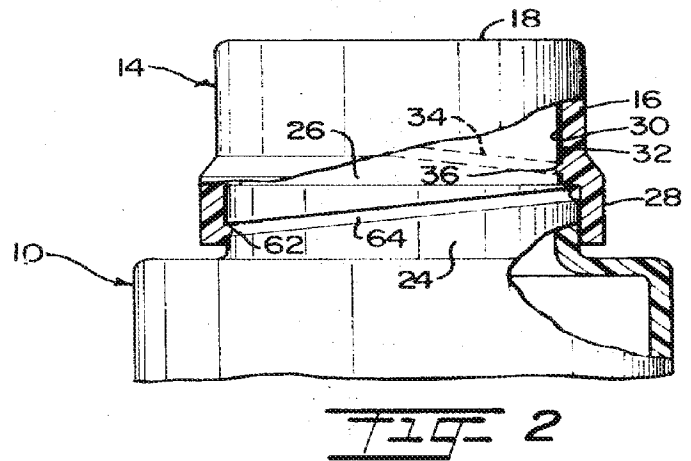


FIG. 6

But Akers fails to teach or suggest, *inter alia*, that a skirt of the cap 11 has a stepped profile that includes a first portion and a second portion being connected to the first portion by inner and outer shoulders and being stepped to extend radially outwardly from the first portion. Akers also fails to teach or suggest that the non-existent second portion includes an outer diameter larger than that of the first portion, and an inner diameter larger than that of the first portion. Akers further fails to teach or suggest a second lug on the non-existent second portion, circumferentially spaced from the lug 20, and positioned proximate and just axially below the non-existent inner shoulder of the skirt of the cap 11.

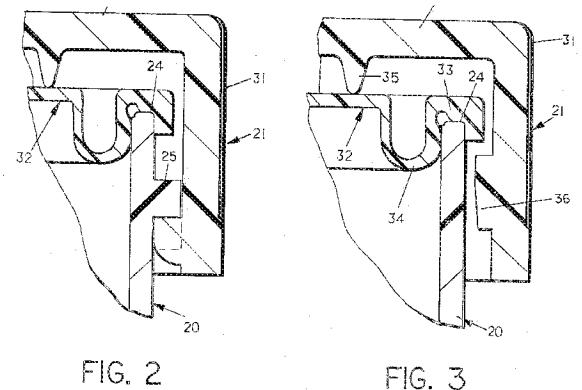
Smith does not cure the deficiencies of Shah or Akers. Smith discloses a package including a container 10 with a neck 12 and closure 14 to seal the container 10. The neck 12 has a first section 24 and a second section 26 of smaller diameter. The first section 24 includes a first helical groove or guide track 34, and the



second section includes a second helical guide track 64. The closure 14 includes an end wall 18, and a wall 16 having an extension wall 28 of larger diameter to fit snugly over the larger first annular section 24 of the container 10. The wall 16 includes a first lug 36 to fit in and move slidably along the first guide track 34, and the extension wall 28 includes a second lug 62 to fit in and move slidably along the second guide track 64.

Although Smith discloses lugs 36, 62, Smith fails to teach or suggest that the lug 36 is positioned proximate and just axially below an inner shoulder of the wall 16.

Swartzbaugh does not remedy the deficiencies of Shah, Akers, and Smith. Swartzbaugh identifies a problem with child resistant packages, including difficulties in removing a closure from a container. As a solution, Swartzbaugh teaches a closure that is more readily removable from a container. Specifically, with reference to



FIGS. 2 and 3 of Swartzbaugh shown above, Swartzbaugh discloses a container 20 having projections 25 with cam surfaces 26 and radial and axial surfaces 27, 28 defining shoulders, and a closure 21 including a skirt 31 having radially inwardly extending

rectangular locking lugs 36 and cam lugs 37 with cam surfaces 38. During removal of the closure 21 from the container 20, rotation of the closure 21 causes the cam lugs 37 to engage the projections 25 so as to cam the closure 21 axially upwardly for ready removal of the closure 21 from the container 20.

Although Swartzbaugh discloses lugs 36, 37, Swartzbaugh fails to teach or suggest that the lug 37 is positioned proximate and just axially below an inner shoulder of the closure skirt 31.

Puresevic does not cure the deficiencies of Shah, Akers, Smith, and/or Swartzbaugh. Puresevic is cited for its teachings regarding a biasing ring 10 of a closure device 1. But, like the other applied references, Puresevic fails to teach or suggest a second lug positioned proximate and just axially below an inner shoulder of a closure.

Even assuming, for the sake of argument, that the asserted combination properly could be made, the combination does not result in both first and second lugs of a pair of internal lugs disposed on a larger second portion of a stepped closure skirt, and certainly does not result in the second lug being positioned proximate and just axially below an inner shoulder of the closure skirt.

Therefore, the alleged combinations of Shah, Akers, Smith, Swartzbaugh, and/or Puresevic do not teach or suggest one or more limitations as recited in Applicants' independent claims 26, 30, 40, 53 and 54. Thus lacking one or more significant elements of Applicants' independent claims 26, 30, 40, 53, and 54, the alleged combination(s) cannot possibly yield or render obvious the subject matter of those claims. For at least these reasons, independent claims 26, 30, 40, 53, and 54 define patentable subject matter over all cited references.

The remaining application claims are dependent claims, and are allowable both by reason of dependency from the independent claims for reasons set forth in detail above, and because of the additional novel limitations set forth therein.

Improper Combination

Artisans of ordinary skill would not pick and choose specific features from among the applied five different references to the exclusion of the teachings of those references. "It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *In re Wesslau*, 353 F.2d 238, 241, 147 U.S.P.Q. 391, 393 (C.C.P.A. 1965); see also *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 448-49, 230 U.S.P.Q. 416, 419 (Fed. Cir. 1986) (holding that district court failed to consider a prior art reference in its entirety by ignoring portions of the reference that led away from obviousness).

Also, in determining differences between applied references and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See e.g. *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332 (Fed. Cir. 2005) ("The 'as a whole' instruction in title 35 prevents evaluation of the invention part by part...Without this important requirement, an obviousness assessment might successfully break down an invention into its component parts, then find a prior art reference corresponding to each component...This line of reasoning would import hindsight into the obviousness determination by using the invention as a roadmap to find its prior art components. Further, this improper method would discount the value of combining various existing

features or principles in a new way to achieve a new result – often the essence of invention.”)

Here, artisans of ordinary skill would not ignore the teachings of Swartzbaugh as a whole and pick and choose only certain features from Swartzbaugh in an attempt to modify Shah’s closure. To do so would render Swartzbaugh device inoperable or unsatisfactory for the purpose for which it was intended. As stated in the MPEP, a modification or combination of prior art references is nonobvious if it can be shown that the modification or combination would change the principle of operation of one of the references, or render a reference inoperable or unsatisfactory for its intended purpose. See MPEP §§ 2145 III and 2143.01(V-VI).

Assuming for the sake of argument that the proposed modification of Shah to include the teachings of Swartzbaugh were possible, it apparently would yield Shah’s container neck 16 having Shah’s container threads 20 and holding lugs 15. The combination also apparently would yield Shah’s closure 18 having Shah’s closure threads 21 engaged to the container threads 20, and Swartzbaugh’s cam lugs 37 to cooperate with the container holding lugs 15. But attempted removal of the closure 18 from the container neck 16 would cause Swartzbaugh’s cam lugs 37 to engage the holding lugs 15 so as to tend to cam the closure 18 axially upwardly. But such upward camming of the closure 18 would be prohibited by the engaged threads 20, 21 and, thus, the closure 18 could not be cammed axially upwardly per Swartzbaugh’s teachings. Therefore, the modification or combination would change the principle of operation of Swartzbaugh, or render Swartzbaugh inoperable or unsatisfactory for its intended purpose. In other words, the proposed modification of Shah to include Swartzbaugh’s lugs in combination with a threaded container would defeat the very purpose of Swartzbaugh’s teachings.

Reconsideration and withdrawal of the § 103 rejections are respectfully requested.

Conclusion

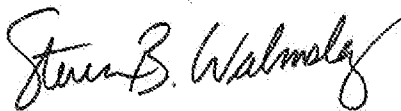
It therefore is believed and respectfully submitted that all claims 26, 28-35, 40-42, 48, 51, and 53-58 in the application are allowable at this time, and favorable consideration is respectfully requested.

If the Examiner is not persuaded that all issues are resolved, the undersigned respectfully requests that the Examiner grant the accompanying interview request to enable an attempt to be made to resolve any remaining issues.

Please charge any fees associated with this submission to Account No. 50-4417 (Rexam Plastic).

Respectfully submitted,

REISING ETHINGTON P.C.

By 

Steven B. Walmsley
Reg. No. 48,021
Telephone (248) 689-3500
Facsimile (248) 689-4071

RCC/SBW